IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

OP.No. 31637 of 2002(S)

OA.597/2002 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER: RESPONDENTS
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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO
GOVERNMENT,SECRETARIAT,
THIRUVNANTHAPURAM.

2. SECRETARY, DEPARTMENT OF FORESTS &
WILDLIFE,
SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER

RESPONDENTS: APPLICANT

C.BALACHANDRAN NAIR, S/O.K.GOVINDAN
NAMBIAR, DEPUTY CONSERVATOR OF FORESTS
(ON LEAVE) FIRE DEPOT CUM TRRAINING CENTRE,
TRIVANDRUM,
RREIDING AT HOUSE, NO.34/1506,
SOCIAL FORESTRY COMPLEX,RAJEEV GANDHI NAGAR,TVM.

BY ADV. SRI.M.R.HARIRAJ
SMT.VINEETHA B.
SRI.P.A.KUMARAN
SMT.REKHA VASUDEVAN
SRI.SURAJ.S
SRI.RAHEESH BABU
SRI.K.S.SARATH KUMAR
SRI.S.NITHIN
BY GOVERNMENT PLEADER SRI.P.A.SALIM

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/03/2007, ALONG WITH WPC.2028/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.53537/2002 IN OP. NO.31637/2002

DISMISSED

13.3.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER IN OA. NO.597/2002 PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH, DT.16.9.02.

EXT.P2:- COPY OF THE CIRCULAR DT.13.7.95 BY THE GOVERNMENT OF INDIA.

EXT.R1(A):- COPY OF THE GRADATION LIST OF IFS OFFICERS IN KERALA ON 1.7.2000.

EXT.R1(B):- COPY OF THE ORDER DT.13.6.02 ISSUED BY THE PETITIONER.

EXT.R1(C):- COPY OF THE APPLICATION DT.1.7.02 REQUESTING FOR EARNED LEAVE

EXT.R1(D):- COPY OF THE ORDER REJECTING THE APPLICATION FOR EXTENSION OF LEAVE DT.5.8.02.

EXT.R1(E) COPY OF THE ORIGINAL APPLICATION NO.597/02 FILED BEFORE THE HONOURABLE TRIBUNAL (WITHOUT ANNEXURES)

/TRUE COPY/

tss

J.B. Koshy & T.R. Ramachandran Nair, JJ.

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O.P.NO.31637/2002-S & W.P.(C).NO.2028/2007-S

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Dated this the 13th day of March, 2007

JUDGMENT

Koshy, J.

The petitioners in O.P.No.31637/2002, State, is challenging the order of the Central Administrative Tribunal passed in O.A. No.597/2002. Again the Tribunal passed another order in O.A. No.758/2005 directing the State to implement its earlier order and that order is challenged in Writ Petition No.2028/2007.

2. The respondent was directly recruited to the State Forest Service as Assistant Conservator of Forests. When his seniority was not correctly fixed by the petitioners State, he challenged the same and got corrected the seniority list and finally he was appointed to the Indian Forest Service in 1984. He was placed in the Junior Administrative Grade. According to him, he is entitled for promotion as Conservator of Forests and he filed O.A.No.966/2001 and pending adjudication of the above, he was cleared for promotion to the post of Conservator of Forests. By order dated 13.6.2002 he was deputed to the Department of Local Self Government (Rural Development) for being posted as Secretary, District Panchayat, Palakkad

and his application for earned leave was rejected by order dated 5.8.2002. He was directed to join as Secretary, District Pancyayat, Palakkad within 24 hours. Disciplinary action was threatened if he fails to do it. The above two orders were challenged before the Tribunal. His contention was that the order to depute him to an ex-cadre post in excess of the number specified, is violative of sub-rule (2) of Rule 8 of the Indian Forest Service (Cadre) Rules, 1966. In sub-rule (2) of Rule 8 there is a prohibition of a cadre officer to be posted in an ex-cadre post in excess of the number specified for the concerned State under item No.5 of the Schedule. It is not disputed that the number of ex-cadre post was in excess of the number specified during the relevant time. To tide over the said situation, State Government was permitted to make such postings by sub-rule (3) of Rule 8, provided prior permission is taken from the Central Government. The Tribunal accepted the contention that the word 'may' in the rule gives power to the State Government to post in excess of the number specified, provided there is prior sanction from the Central Government. Admittedly petitioner's order for deputation was without prior sanction from the Central Government and therefore illegal. The Tribunal also noticed that even if there are some departmental directions, the rule cannot be overtaken by the departmental directions as held by the Honourable Supreme Court in **K.** Kuppuswamy

and another v. State of Tamil Nadu and others ((1998) 8 SCC 469) and therefore those orders making his deputation and denial of leave was set aside and with a direction to the State Government to post the applicant in the cadre post in accordance with law. Tribunal's order was challenged by the Department by filing O.P.No.31637/2002.

3. It is the case of the respondent that immediately after the Tribunal's order, he approached the State Government for a posting. He was not granted any posting for 1 ½ months. Thereafter also, against the direction of the Tribunal, he was given a deputation posting and he joined duty. He was not given any increments thereafter also. According to the respondent, the reasons stated by the petitioners in not complying with the order was that there was a stay of the Tribunal's order in O.A. No.966/2001 and O.P.No.31637/2002 is pending. But even though the petitioners applied for a stay when the original petition was filed, no stay was granted as against the respondent. Division Bench of this court in the stay petition ordered as follows:

> "Order of the Tribunal will be restricted to the case of the respondent alone."

The above order was passed because of the contention raised by the petitioners that it will affect the others who are not parties before the

Tribunal also. So, in fact there was no stay order as far as respondent is concerned and in the absence of stay order, the petitioner was bound to implement the order of the Tribunal forthwith. In effect, this court rejected the stay petition as far as the respondent in this case is concerned. Apart from that, even though the above order was passed on the stay petition and the writ petition was admitted and notice was ordered on 29.10.2002, no process was served in the above case and process was furnished to serve notice on the respondent only on 30.1.2007. At the same time, in the guise of pendency of a writ petition and stay order, the respondent was not given any incremental benefits also apart from the fact that Tribunal's order was not implemented. Since no benefits were granted, he filed O.A. No.758/2005, the Tribunal disposed of the application with the following directions:

> " We dispose of this O.A. by directing the State Government by allowing the prayer of the applicant with a specific direction that the exercise of regularisation should be completed within a period of two months from the date of receipt of a copy of this order and the consequential monetary benefits, if any, arising out of such regularisation should be disbursed to him within a period of one month thereafter. Further, we are not inclined to award any interest

as requested. No costs."

This order is challenged in Writ Petition No.2028/2007. We see absolutely no reason to interfere with the above orders of the Tribunal. Admittedly petitioner was transferred originally to an ex-cadre post in excess of the deputation quota without prior permission of the Central Government against the specific provisions in the rules and even though there was no stay with regard to the operation of the order, State Government did not implement the same. In any event, we are also of the view that when a writ petition is filed challenging the order of the Tribunal, when it is specifically stated in the stay order that the order will be restricted to the respondent alone, the petitioners ought to have implemented the same as the stay petition against the respondent was virtually rejected. Further, when such an order is passed on 29.10.2002, it is not proper for the petitioners to deny the benefit even without taking any steps to serve notice on the respondent till 2007.

4. On the facts and circumstances of the case, apart from the fact that there is no merit, we are of the opinion that it is not a case where extra-ordinary jurisdiction under Article 227 of the Constitution of India can be invoked in favour of the petitioners. We also note that the order of the Tribunal is not patently illegal and there is no perverse finding so as to

attract Article 227 of the Constitution of India.

The writ petitions are dismissed.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

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